Venture Industries, Inc. (formerly VEMCO, Inc.) *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO. Case 7–CA–39190

March 31, 2000

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

On September 19, 1997, Administrative Law Judge George Carson II issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed cross-exceptions and a supporting and answering brief, and the Charging Party filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified below, and to adopt the recommended Order as modified.[2]

1. The General Counsel excepts to the judge's finding that the Respondent did not violate Section 8(a)(1) through Manufacturing Manager Ken Winget's alleged threat that as far as he was concerned the plant would never be a union shop. We find merit in this exception and we find the violation. In about July 1996, Winget approached employee Ken Doyka, who was working on the floor of the facility, and asked him why he was wearing a prounion button. When Doyka responded that he was on the Union's organizing committee, Winget asked him why and said "[u]nions don't do any good for you." Winget said that he had worked in a union shop and the union had done nothing good for him. He stated that the union took his dues and was just a waste of money. Winget also stated that there would be no chance for promotion in a union shop because supervision would be hired from "outside." During the course of their talk, Winget also told Doyka that as far as he was concerned the plant would never be a union shop. Winget asked a nearby employee, Les Summers, if he knew what UAW stood for, and when Summers replied that he was not sure, Winget said that it means "You Ain't Working." The conversation lasted about 45 minutes to an hour.[3]

The judge found, and we agree, that the Respondent's statements that UAW means "You Ain't Working" and that there would be no chance for promotion in a union shop constitute unlawful threats that employees would lose jobs and promotional opportunities if the Union were to win representation.[4] Contrary to the judge, however, we also find that an employee would reasonably understand Winget's statement that as far he was concerned the plant would never be a union shop, to be a threat that voting for union representation was futile and that the Respondent would not recognize and bargain with the Union. See, e.g., *Maxi City Deli*, 282 NLRB 742, 745 (1987) (employer's comment that "there would never be a union at his restaurant" found unlawful). The context of the discussion adds to the threatening nature of Winget's comment because, as indicated above, he made it in a lengthy conversation in which he unlawfully threatened the loss of jobs and promotional opportunities. Thus, we find that the nature of the statement, and the context in which it was spoken, conveyed an unlawful threat of futility of selecting the Union. See, e.g., *Outboard Marine Corp.,* 307 NLRB 1333, 1335 (1992), enfd. mem. 9 F.3d 113 (7th Cir. 1993) (statement that the company would never give employees a contract was an unlawful threat of futility and not protected opinion).[5]

2. The Respondent excepts to the judge's findings that Molding Supervisors Walter Kellogg and David McLaughlin-Smith are statutory supervisors and that McLaughlin-Smith unlawfully interrogated employee Chris Williams. We agree with the finding that Kellogg

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951).

[2] No exceptions were filed to the judge's dismissal of allegations that Supervisor Walter Kellogg confiscated union literature; Manager Ken Winget interrogated employees; Supervisor Roger Beamer implied surveillance of employee union activity and threatened employees; CEO Larry Winget coercively interrogated and threatened employees; and Supervisor David McLaughlin-Smith implied surveillance of union activity, all in violation of Sec. 8(a)(1).

[3] Although the judge found that Winget's "UAW" question was posed to Summers in a subsequent separate conversation, the record establishes that it was not. Doyka testified that he and Summers were running press 13, and that they were the only two employees working there when Winget approached them and asked Doyka why he was wearing a prounion button and said that unions don't do any good for you, that they had not done any good for him and that they were a waste of money. When Doyka was asked at the hearing what else was said, he testified that Winget asked Summers if he knew what UAW stood for. When Summers replied that he did not, Winget said it means "You Ain't Working." When Doyka contradicted Winget, the latter repeated that UAW meant You Ain't Working." Winget then left, but returned about 5 minutes later with Bill Hart. Hart asked Summers if he knew what UAW stood for, and Summers replied, "You Ain't Working."

[4] *Hurst Performance, Inc.,* 242 NLRB 121, 127 (1979) (UAW means "You Ain't Working" found unlawful).

[5] We adopt the judge's finding that the Respondent did not violate Sec. 8(a)(1) through Ken Winget's comment during this conversation that he had been in a union shop and that paying union dues had been a waste of money. Members Liebman and Brame also adopt the judge's dismissal of the allegations that Larry Winget's comment that the election "would be tied up in court for a long time" and Supervisor Walter Kellogg's comment that the election "would be tied up in court for years" were threats of futility of selecting the Union. Member Fox finds it unnecessary to pass on these allegations because the findings would be cumulative.

We further adopt the judge's finding that the Respondent violated Sec. 8(a)(1) through CEO Larry Winget's solicitation of grievances.

and McLaughlin-Smith are supervisors within the scope of Section 2(11) of the Act.[6] Accordingly, we affirm the judge's finding that the Respondent, through McLaughlin-Smith, unlawfully interrogated Williams about his support for the Union.

3. We also adopt the judge's finding, essentially for the reasons set forth in his decision, that the Respondent violated Section 8(a)(1) of the Act through the confiscation of union literature by Molding Department Manager Dan Blankenship from tables in the employees' breakroom and from the employees' bulletin board. With regard to the bulletin board, we note that the judge credited employee Pamela Gill, who testified that she saw Blankenship removing two pieces of prounion literature from the bulletin board. The Respondent's argument on exceptions, based on Blankenship's discredited testimony, is that he removed only a single flyer and did so because it had been defaced apparently by someone opposed to the Union. Even assuming that one of the two pieces was defaced, Blankenship's actions were still likely to have a coercive impact. Even Blankenship did not contend that he remarked on the defacement when he was removing the flyer, and there is no evidence that the other flier was defaced. Gill reasonably viewed Blankenship's action as simply removing prounion literature from the bulletin board that had been made available to employees for notice posting.[7]

[6] In *Venture Industries*, 327 NLRB 918 (1999), we previously found Kellogg and McLaughlin-Smith to be statutory supervisors and therefore ineligible to vote in the representation election. Consistent with the previous case, Members Fox and Brame, in finding Kellogg and McLaughlin-Smith to be statutory supervisors here, rely on their authority to discipline employees and to make effective recommendations regarding the selection of production employees to fill in-plant jobs. Member Liebman, as she did in the earlier case, relies only on the fact that they effectively recommend the promotion and reassignment of employees.

[7] Contrary to our dissenting colleague, we find the court's opinion in *Guardian Industries Corp. v. NLRB*, 49 F.3d 317 (7th Cir. 1995), totally inapposite on the facts of this case. The Seventh Circuit held that where an employer had expressly limited a plant bulletin board to employee "swap-and shop" notices and in recent times prior to the union campaign had consistently enforced that limitation, it was not unlawful discrimination to prohibit other notices, including union literature, that did not fall within the permissible category. No such employer policy was established here, and indeed, as noted above, the Respondent does not rely on any such contention. As for our colleague's contention that there was no adequate showing that other types of postings were treated differently, we note that the Respondent does not dispute that employee notices in numerous categories were permitted on the bulletin board. Its claim concerning its reason for removing the union flyers rests on discredited testimony. The facts in this case are more akin to those in which unlawful discrimination has been found. E.g., *Roadway Express, Inc. v. NLRB*, 831 F.2d 1285, 1290 (6th Cir. 1987) (where employer permits employee access to bulletin boards for any purpose, the Act secures the employees' right to post union material).

We find it unnecessary to pass on whether Mark Hansel is the Respondent's agent and whether he unlawfully removed union literature because the finding of an unfair labor practice would be cumulative

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Venture Industries, Inc. (formerly VEMCO, Inc.), Grand Blanc, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(d) and reletter the subsequent paragraphs.

"(d) Threatening employees that the plant will never be a union shop."

2. Substitute the attached notice for that of the administrative law judge.

MEMBER BRAME, dissenting in part.

I agree with my colleagues that the judge properly found that Molding Supervisors Walter Kellogg and David McLaughlin-Smith are statutory supervisors and that McLaughlin-Smith unlawfully interrogated employee Chris Williams. I also agree that the Respondent violated Section 8(a)(1) by Manufacturing Manager Ken Winget's threatened loss of promotional opportunities if the Union were to win representation and by CEO Larry Winget's solicitation of grievances. I further agree that the judge properly dismissed the allegation that the Respondent violated Section 8(a)(1) by Ken Winget's comment that he had been in a union shop and that paying union dues had been a waste of money. In addition, I agree with Member Liebman that the judge properly dismissed the allegation that the Respondent violated Section 8(a)(1) by Larry Winget's comment that the election "would be tied up in court for a long time" and Supervisor Kellogg's comment that the election "would be tied up in court for years."[1]

[1] I also agree that the Respondent violated Sec. 8(a)(1) by removing union literature from tables in the employees' breakroom. However, I would find that the Respondent did not unlawfully remove literature posted on the bulletin board because I find that the Respondent's property interest permits it to limit the bulletin board's use and the General Counsel has not shown that the Respondent impermissibly discriminated in its treatment of similar types of information with respect to bulletin board access. As found by the court in *Guardian Industries Corp. v. NLRB*, 49 F.3d 317, 318–322 (7th Cir. 1995), discussed in my concurring opinion in *Hale Nani Rehabilitation & Nursing Center*, 326 NLRB 335, 340 (1998), a union's right to organize does not imply that an employer must promote unions by giving them special access to bulletin boards. As noted by that court, the party making a claim of discrimination "must identify another case that has been treated differently and explain why that case is the 'same' in the respects the law deems relevant or permissible as grounds of action." Supra at 319. Contrary to my colleagues, the principles set forth in *Guardian* require that the General Counsel affirmatively show that the employer has permitted postings of similar types of information, not simply that "other [different] types" of postings were permitted. That requirement must be satisfied irrespective of whether the employer has previously defined an express limitation for bulletin board postings. In the present case, the General Counsel has failed to do so.

I agree with my colleagues that we need not pass on whether Mark Hansel is an agent of the Respondent and whether he unlawfully confiscated literature because such findings would be cumulative.

Contrary to my colleagues, and in agreement with the judge, I would also find that the Respondent did not violate Section 8(a)(1) through Ken Winget's comments that as far as he was concerned the plant would never be a union shop. Contrary to my colleagues and the judge, however, I also find that the General Counsel did not establish that Winget's comment that UAW means "You Ain't Working" constituted a threat of job loss in violation of Section 8(a)(1).

In about July 1996, Winget approached Ken Doyka on the shop floor and engaged him in a conversation that yielded a number of allegations of conduct violative of Section 8(a)(1). Winget asked Doyka why he was wearing a prounion button. Doyka stated that he was on the Union's organizing committee. Winget asked why and commented that "[u]nions don't do any good for you." Winget said that he had worked in a union shop and that the union had done nothing good for him. He stated that the union took his dues and was just a waste of money. Winget also stated that there would be no chance for promotion in a union shop because supervision is hired from "outside." During the course of their talk, Winget also expressed his opinion that as far as he was concerned the plant would never be a union shop. Winget later asked a nearby employee, Les Summers, if he knew what UAW stood for, and when Summers replied that he was not sure, Winget said that it means "You Ain't Working."

To determine whether a statement constitutes an impermissible threat, it must be viewed in light of the circumstances existing when spoken and not in a vacuum. *Shen Automotive Dealership Group*, 321 NLRB 586, 591 (1996), citing *TRW, Inc. v. NLRB*, 654 F.2d 307, 313 (5th Cir. 1981). The Board has dismissed 8(a)(1) allegations involving statements related to plant closure or job loss where the remarks were clearly labeled as the supervisor's opinion.[2]

In the totality of the circumstances, I find that a reasonable employee would not find Winget's comments described above and discussed below to be threatening or coercive. Winget's comment that UAW means "You Ain't Working" was a play on the initials and would not by its plain meaning reasonably convey a threat that the Respondent would take adverse action against Doyka or other employees because of their union activity. Specifically, the General Counsel presented no evidence that Winget's statement, in the context of his discussion of his personal views on the effects of unionization, could reasonably be interpreted as coercive by indicating that management would cause the loss of jobs if the Union were successful. Thus, without more, I cannot find that the General Counsel has established that Winget's vague comment is a threat that the Respondent would cause employees to lose their jobs if the Union were to win representation.[3]

I also find that Winget's comment that as far as he was concerned the plant would never be a union shop did not reasonably convey a threat that management would be obstructionist if the Union were to win the election. Rather, as noted above, he was conveying his own personal experience with a unionized workplace and expressed his own personal opinion about the practical issues relevant to employees considering union representation. As the judge concluded, the comment was made in the context of predicting which side would be successful in the election. Thus, the comment can be nothing more than Winget's personal opinion because he had no ability to predict the likelihood of the Union's success. Further, the General Counsel has failed to establish any facts supporting an interpretation of Winget's comment as a coercive attempt to affect the outcome. Absent such a coercive character, the statement cannot be seen to violate Section 8(a)(1). See *NLRB v. K & K Gourmet Meats, Inc.,* 640 F.2d 460, 464 (3d Cir. 1981) (supervisor's statement that "the Union was blocked before and would be blocked again" did not constitute a threat that organizing was futile absent evidence of coercion).

In any event, as the court observed in *Graham Architectural Products Corp. v. NLRB*, 697 F.2d 534, 541 (3d Cir. 1983), the First Amendment and Section 8(c) of the Act permit "employers to communicate with their employees concerning an ongoing union organizing campaign." See also *Federal-Mogul Corp. v. NLRB*, 566 F.2d 1245, 1251 (5th Cir. 1978) (Sec. 8(c) guarantees the right of management to converse with employees). My colleagues' finding that Ken Winget's remarks implied that the employees' union activity might harm their interests in some way is based on sheer speculation and is not supported by the law or the facts. Accordingly, I find that the Respondent did not violate Section 8(a)(1) through Winget's comments.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union

[2] See, e.g., *Standard Products Co.*, 281 NLRB 141, 151 (1986), enfd. in part 824 F.2d 291 (4th Cir. 1987).

[3] Accordingly, I disagree with the Board's holding in *Hurst Performance, Inc.,* 242 NLRB 121, 127 (1979), that the statement UAW means "You Ain't Working" is unlawful.

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT confiscate or destroy union literature.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT threaten loss of promotional opportunities and job loss if you select the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, or any other labor organization, as your collective bargaining representative.

WE WILL NOT threaten that the plant will never be a union shop.

WE WILL NOT solicit your grievances and promise to remedy them in an effort to dissuade you from supporting the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

VENTURE INDUSTRIES, INC. (FORMERLY VEMCO, INC.)

Jeff Wilson, Esq., for the General Counsel.
David M. Buday and *Kenyatta L. Brame, Esqs.,* for the Respondent.
Judith A. Sale, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. This case was tried in Grand Blanc, Michigan, on July 10 and 11, 1997. The charge was filed on November 12, 1996,[1] and the complaint was issued on January 21, 1997. The complaint, as amended at hearing, alleges numerous violations of Section 8(a)(1) of the National Labor Relations Act. Respondent's timely answer denies all violations of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Charging Party, and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, is engaged in the manufacture, sale, and distribution of plastic molded automotive parts and related products at its facility in Grand Blanc, Michigan, where it annually purchases and receives goods and materials valued in excess of $50,000 directly from points outside the State of Michigan. The Respondent admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[1] All dates are 1996 unless otherwise indicated.

The Respondent admits, and I find and conclude, that International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background and Supervisory Issues

Respondent, at its Grand Blanc facility, is primarily engaged in the manufacture of molded plastic automobile bumpers and side moldings. This facility is one of a number of facilities operated by Respondent. Larry Winget is the chief executive officer (CEO) of the corporation. The general manager at Grand Blanc is Warren Brown. Ken Winget, Larry Winget's nephew, is the current operations manager. In the summer of 1996, he was manufacturing manager.

The Respondent won a prior election at Respondent's facility in 1989. The Union filed unfair labor practice charges and objections to the election. Following a hearing, the Board adopted the decision of the administrative law judge and directed that Respondent bargain with the Union. *Vemco, Inc.*, 304 NLRB 911 (1991). The Court of Appeals for the Sixth Circuit modified the Board's order, deleting the bargaining order, but finding that Respondent had committed unfair labor practices that were sufficient to require a rerun election. *NLRB v. Vemco, Inc*., 989 F.2d 1468 (6th Cir. 1993). The Board ordered a rerun election "whenever the Regional Director deems appropriate." *Vemco, Inc.*, 315 NLRB 200, 201 (1994). In June 1996, the Union filed and then withdrew a petition for an election. On July 1, the Regional Director ordered that the rerun election be held on August 8. Respondent sought a stay of the election from the Court Appeals for the Sixth Circuit, arguing that various changes had occurred in the bargaining unit and that, therefore, a supplemental hearing was required to determine whether the 1989 unit was still appropriate. The court of appeals refused to stay the election. The violations pled in the complaint, prior to the amendments made at the hearing, arise from conduct that allegedly occurred in July and early August, preceding the rerun election held on August 8.

Respondent employs over 500 persons at Grand Blanc. The manufacturing facility consists of several buildings that are designated by number, as well as a color code. The molding operation is performed in building 2, which is color coded red. All the employee witnesses who testified in this proceeding worked on the second or third shift in this building, referred to as "red molding." There are approximately 40 employees on the red molding second shift and some 20 employees on third shift. Respondent, at the hearing, stipulated that Molding Manager Dan Blankenship is a supervisor as defined in Section 2(11) of the Act.

The complaint alleges, and Respondent's answer denies, the supervisory status of Second Shift Red Molding Supervisors Walt Kellogg and David McLaughlin-Smith and Third Shift Red Molding Supervisor Roger Beamer. These individuals work out of an office located adjacent to the red molding breakroom. The office opens onto the plant floor. The names of Kellogg, McLaughlin-Smith, and Beamer appear on the door of the office. Blankenship, who regularly works from about 7:30 a.m. until 5 or 6 p.m., overlaps for a couple of hours with the second shift, which reports at 3:30 p.m. The two second-shift supervisors are the only members of management present in the building after Blankenship leaves. Beamer is the only member

of management present in red molding on third shift. Kellogg, McLaughlin-Smith, and Beamer assign work to the employees on their respective shifts, using their knowledge of the capabilities of the individual employees whose work they oversee. They have the authority to, and do, issue both verbal and written disciplinary warnings. They independently determine whether a warning is to be verbal or written.[2] They grant time off and permission to leave early. I find that these shift supervisors possess and exercise the authority to assign, discipline, and responsibly direct the employees assigned to their respective shifts, that they exercise independent judgment when doing so, and that they are supervisors as defined in Section 2(11) of the Act.

The complaint also alleges, and Respondent's answer denies, that Mark Hansel is a supervisor and agent of Respondent. There is no evidence that Hansel directly supervises anyone. Rather, he has plantwide responsibility for safety, which includes monitoring the use of hazardous material, assuring that appropriate safety procedures, such as the wearing of safety glasses, are followed, and regularly conducting safety and housekeeping audits of the entire facility, which includes walking throughout the plant, including employee breakrooms. He publishes documents issued under his name as "safety coordinator."[3] Thus, it appears that his duties are similar to that of the safety engineers in *General Chemical Co.*, 57 NLRB 524, 533 (1944); and *Richard Ore Co.*, 37 NLRB 544, 546 (1941). Hansel carries out his duties independently. He determines when he will conduct safety and housekeeping audits. In view of the foregoing, the possession of supervisory authority by Hansel is immaterial. The record establishes, and I find, that Hansel, when conducting safety and housekeeping audits, is acting as an agent of Respondent.

B. The 8(a)(1) Allegations

1. Confiscation of union literature

The complaint alleges three instances in which Respondent's supervisors or agent removed prounion literature. On July 8, second-shift employee Pamela Gill, a facilitator, was preparing to mop the floor of the red molding breakroom, a task regularly performed by facilitators. As Gill entered the room with her mop and bucket, she observed Molding Department Manager Blankenship picking up prounion literature, two fliers, one on green paper, the other on white paper. Gill, who supported the Union, had previously read these documents. Blankenship already had some of the prounion literature in his hand, and, as Gill watched, he picked up the prounion literature from "the last two" of the four tables in the breakroom. Blankenship then went to the bulletin board where he removed two pieces of prounion literature. After doing this, he left the room and returned to his office. He placed the documents on a corner of his desk. Blankenship, although denying that he carried any literature to his office, did not deny that he may have thrown away prounion literature, testifying that he "did not know that for sure." Blankenship acknowledged removing one prounion flier from the bulletin board, asserting that it has been defaced. He denied leaving antiunion literature on the tables.[4] I credit Gill.[5]

On July 26, employee Terry Snyder, a machine operator, was on the plant floor. Another employee told him that safety coordinator Hansel was throwing away prounion literature in the red molding employee breakroom. Snyder immediately went to the breakroom and confronted Hansel, asking where "our" prounion literature was. Hansel responded, "I threw the shit away." Snyder protested that employees had the right to have the literature. Hansel stated that if Snyder did not like it he could "deal with him outside of work."[6]

On August 2, Gill states that she observed Supervisor Kellogg throwing away prounion literature; however, I find she was mistaken in this regard.[7] Although Gill observed Kellogg throwing away something, Kellogg credibly testified that he did not do so because a representative of the human relations department, either Joan Bartus or Pam Moore, specifically passed down the instruction that prounion literature "was not to be touched." I credit his testimony that he obeyed this instruction. I also note that Kellogg testified that he would throw away trash in the breakroom, but would stack literature in a neat pile. This is consistent with one aspect of Hansel's testimony. Hansel testified that he would "probably not" throw away documents if they were in a neat pile. It further confirms the testimony of Gill that materials that employees would read

[2] Human Resource Manager Joan Bartus testified that shift supervisors do not have the authority to suspend employees. I find the absence of authority to suspend of little significance in view of the authority that shift supervisors admittedly have and exercise.

[3] The complaint alleges Hansel's title as "safety supervisor." Bartus gave his title as "safety technician." Testimony establishes that he signs documents as "safety coordinator."

[4] Gill testified that Blankenship left antiunion literature, a flier with a cartoon, on the tables. Respondent denied producing antiunion literature until late July, but Bartus acknowledged that she received antiunion literature, a letter written and duplicated by an employee, during the campaign. This letter contains a piece of clip art on the bottom. Whether Blankenship discriminated between prounion and antiunion literature is of no consequence. Employees were permitted to read newspapers, Avon books, and other literature in the breakroom. Whether the confiscation of prounion literature was accompanied by the leaving of antiunion literature is immaterial.

[5] Respondent contends that Gill was not credible for various reasons, including certain responses she made relating to the Union's employee bargaining committee. Gill was asked whether John Bettman was a committee person for the Union. She responded, "We don't have any committee people." After that she was asked whether there was "a vote for there to be a bargaining committee." She responded, "I don't know if there was or not." Documentary evidence establishes that both Bettman and Gill were elected to an employee bargaining committee shortly after the election in 1994. Respondent argues that Gill's failure to recall this reflects upon her credibility. I do not agree. The question was ambiguous. Counsel asked whether there was a vote to establish a bargaining committee. I credit Gill's testimony that she did not know whether there had been such a vote. Respondent did not establish whether there is currently, in 1997, a bargaining committee.

[6] Hansel, in his direct testimony, acknowledged that he "could" have thrown away prounion literature in the course of cleaning the breakroom, which he said was a mess when he entered it. On cross-examination, it was shown that he was well aware that he had thrown away prounion literature. He testified that Snyder "came in with a chip on his shoulder," telling him that he could not "throw those things away." The "those things" to which Hansel states Snyder referred was obviously the prounion literature that he had destroyed and which Snyder was protesting. I credit Snyder.

[7] Although Gill testified that Kellogg was crumpling up prounion literature and throwing it in the trash, when asked how she knew it was prounion literature, Gill said that the prounion literature was what was missing from the table. Unlike her observation of Blankenship, Gill did not identify any of the literature in Kellogg's hand.

during breaks were not thrown away.[8] Consistent with *Page Avjet, Inc.*, 278 NLRB 444, 450 (1986), cited by Respondent, I find that the prounion literature left in the break area assumed the same character as other literature. Respondent's practice, as established by the testimony of Gill and Kellogg, was to place literature in a neat pile. Blankenship and Hansel not only deviated from that practice during the union organizational campaign, they disobeyed the instruction not to touch prounion literature. Neither was asked about, or acknowledged receiving, the instruction not to touch prounion literature that Kellogg received and obeyed.[9]

The removal of prounion literature from bulletin boards that employees used for posting notes and announcements violates Section 8(a)(1) of the Act. *Jennings & Webb, Inc.*, 288 NLRB 682, 692 (1988). Likewise, the confiscation of prounion literature from employee break tables violates the Act. *Vemco, Inc.*, 304 NLRB at 927. Respondent, by the actions of Blankenship and Hansel in confiscating prounion literature from the employee breakroom, violated Section 8(a)(1) of the Act.

2. Interrogation

The complaint alleges four instances of interrogation; however, evidence was adduced regarding only three instances.[10] In late July, machine operator Ken Doyka was working at press 13. Ken Winget, who was then manufacturing manager and who regularly walked through the plant, approached Doyka and, noticing that he was wearing a UAW button, asked, "What are you wearing that button for?" Doyka replied, "Because I [am] on the organizing committee." K. Winget responded, "Well, what would you want to do that for? Unions don't do any good for you." The complaint characterizes K. Winget's questioning regarding the UAW button as coercive interrogation of employees "about their activities" on behalf of the Union. I find no evidence of any probing into specific union activity by K. Winget. Following this repartee, K. Winget, Doyka, and employee Les Summers engaged in a conversation that lasted some 45 minutes, as Doyka and Summers continued to work. I find no evidence of coercion in K. Winget's asking organizing committee member Doyka why he was wearing a UAW button. *Rossmore House*, 269 NLRB 1176 (1984). Respondent did not violate Section 8(a)(1) when K. Winget questioned why Doyka was wearing a union button.

In July, prior to the August election, Chris Williams was walking towards the employee breakroom. As he passed the supervisors' office, Kellogg called to him. Williams entered the office where both Kellogg and McLaughlin-Smith were present. Kellogg remained standing. Williams sat in a chair in front the desk. McLaughlin-Smith was seated in the desk chair. McLaughlin-Smith handed Williams some antiunion literature, a document about five pages long, and asked Williams how he felt about the Union.[11] Williams, who had not openly shown his support for the Union, did not give a straight answer, responding to the effect that he was not certain, that he was undecided. After looking over the first couple of pages of the document he had been handed, Williams skimmed the last three pages. McLaughlin-Smith commented sarcastically, "You've seemed really interested in that thing I handed you." He then commented, "I'll file this in file 13 for you," referring to the waste basket.

Although McLaughlin-Smith gave general denials when asked if he interrogated Williams, on cross-examination he acknowledged that, after he gave Williams the literature, "[t]here was a conversation that we had and I don't remember what it was."[12] I credit Williams. At the time of this conversation, Williams had not openly declared his support for the Union. Indeed. McLaughlin-Smith stated that he "had no idea" of Williams union sympathies. Respondent's contention that this encounter was not a coercive interrogation, but just friendly joking, is belied by McLaughlin-Smith's acknowledgment that during the encounter he did not smile. The conversation was not "casual and amicable." Cf. *Sunnyvale Medical Clinic*, 277 NLRB 1217, 1218 (1985). Williams, whose union sympathies were not known, was called into the supervisors' office by one supervisor, Kellogg, who remained and stood as the other supervisor, McLaughlin-Smith, questioned Williams and observed his reaction to the antiunion literature that he gave him. As a result of Williams' reaction, McLaughlin-Smith determined that Williams supported the Union. The coercive nature of this interrogation is confirmed by Kellogg. Later that day, after Williams had returned to his job, Kellogg approached him and apologized, stating that "we shouldn't have done that because its kind of illegal for us to have done that." Kellogg was correct. Respondent, by coercively interrogating Williams, violated Section 8(a)(1) of the Act.[13]

[8] Uneaten food, half empty drink cups, and out of date newspapers were thrown away. Current reading materials were not thrown away. In the midst of a union organizational campaign, both prounion and antiunion literature would be "current."

[9] This same Respondent, in opposing the Union's efforts in the organizational campaign in 1989, was found to have violated Sec. 8(a)(1) in various respects, including specifically the confiscation of union literature. *Vemco, Inc.*, 304 NLRB 911, 927 (1991), enfd. in relevant part 989 F.2d 1468 (6th Cir. 1993).

[10] Supervisor Kellogg, with Supervisor McLaughlin-Smith, was involved in the interrogation of employee Chris Williams. There is no evidence of a separate occasion in which Kellogg "coercively interrogated employees about who their representatives would be if they chose the . . . Union as their bargaining representative." Kellogg did state to Gill his opinion that John Bettman, one of the leading union activists, would be a shop steward. This statement of opinion is protected by Sec. 8(c) of the Act.

[11] The complaint alleges, as a violation separate from the interrogation, that Respondent "coerced employees by requiring them to read antiunion literature." I find McLaughlin-Smith's presentation of the antiunion literature to Williams and his observation of Williams' reaction did not constitute a separate violation. Rather, it was an integral part of the interrogation.

[12] McLaughlin-Smith acknowledged that he observed that Williams was obviously not interested in the anitunion literature that he had given to him. He defensively asserted that determining Williams' union sympathies "wasn't my mission really."

[13] Sometime after this interrogation, McLaughlin-Smith commented to Williams that he, Williams, was a "closet union member like Gary Jarvis." This statement is alleged as implying surveillance of employee union activities. The General Counsel did not adduce any evidence regarding whether Jarvis was open in his support of the Union or whether he was a "closet union member," as McLaughlin-Smith stated. McLaughlin-Smith testified that Jarvis wore a UAW button and made no secret of his support for the Union. Insofar as the evidence that Jarvis openly supported the Union is unrebutted, I dismiss this allegation of the complaint. This incident does confirm that McLaughlin-Smith, by his interrogation of Williams, learned that Williams supported the Union. The complaint does not allege, and I do not find, any violation as a result of McLaughlin-Smith's asking, after the election, whether Williams was going to go to the union hall with his "solidarity brothers."

The complaint alleges that CEO Larry Winget, when he addressed the employees on August 5, coercively interrogated them regarding why they wanted a union. I find that L. Winget did ask employees why they wanted a union; however, the question was asked rhetorically, was not coercive, and was not an unlawful interrogation. The rhetorical question was used to solicit employee grievances. As hereinafter discussed, Respondent did violate Section 8(a)(1) of the Act by soliciting employee grievances and implying that they would be remedied.

3. Threats of futility

The complaint alleges that Ken Winget advised employees that selection of the Union was futile when he stated that it was a waste of time to pay union dues and that Respondent would never be a union shop. K. Winget, in the conversation at press 13 with Doyka and Summers, told them that he had worked in a union shop and that the union "did nothing good for him." He stated that the union took his dues and that it was "just a waste of money." In this same conversation, K. Winget also expressed his opinion that the plant would not be a union shop; however, the General Counsel did not establish the context in which this remark was made.

The foregoing remarks concerning union dues contain no threat of futility. K. Winget did not believe that the union of which he had been a member had done anything for him.[14] In view of this, his opinion that paying dues was a waste of money logically followed. The remark regarding the plant not being a union shop was unaccompanied by any threat. Regarding this remark, Doyka testified that "on my side we were hoping we were going to be [Union] and the Company . . . didn't want it." I find that the comment was made in the context of predicting which side would be successful in the election and, in that context, was an expression of opinion protected by Section 8(c) of the Act.

The complaint also alleges that CEO Larry Winget and Supervisor Kellogg threatened futility by advising that the election "would be tied up in court for years." Near the end of July, Kellogg and employee Ken Doyka were discussing the upcoming election. Employee John Bettman stated that he would bet with Kellogg that the Union was going to win the election. Kellogg refused to bet, saying, "Well, it [will] be tied up in court for years. So, it really doesn't matter."[15] On August 5 and 6, L. Winget, when addressing the red molding employees at the beginning of the third shift, expressed his displeasure with the Board for proceeding with a rerun election. He then stated that "it would be tied up in court for a long time." In a letter dated August 5 that was distributed to all employees, L. Winget refers to the order of the court of appeals, in which the court refused to order a stay of the election. The order, after finding that the court of appeals was without jurisdiction to grant the requested relief, sets out the process for obtaining review of a Board directed election, stating that the "accepted procedure is for the employer to refuse to bargain . . . for the Board to find an unfair labor practice, and for the order containing that finding be brought to this court." L. Winget quotes this language and concludes this paragraph of the letter by stating that "Venture will exercise its rights in this manner, but it may take years to resolve. *You* can, however, put an end to this quickly by voting NO on Thursday."

Kellogg testified that he made his remark based upon his knowledge that the first election was not "settled" until a couple of years after he was hired, and that he was not even employed when the first election was held. As noted previously, there was extensive litigation following the 1989 election. Respondent sought to obtain a stay of the election scheduled for August 8, but the court of appeals refused. Its order sets out the procedure for contesting the election, and L. Winget quoted this language in his letter. The Board, in *CWI of Maryland, Inc.,* 321 NLRB 698, 707 (1996); and *Daniel Construction Co.*, 145 NLRB 1397, 1410 (1964), has held that comments relating to delay due to litigation unlawfully conveyed the impression that selection of a union would be futile; however, in both of those cases, the statements relating to litigation were coupled with threats. In neither case was the respondent directly quoting from an order of a court of appeals. In these circumstances, and specifically noting the absence of any contemporaneous threat, I find that the remark of Kellogg, based on the lengthy record of litigation that had followed the first election, did not violate Section 8(a)(1) of the Act. I also find that the statements of L. Winget, relating to Respondent's intention to follow the specific procedure that the court of appeals set out in its order, was unaccompanied by any threat and, therefore, did not violate Section 8(a)(1) of the Act.

4. Threats relating to promotion and job loss

The complaint alleges that Ken Winget threatened loss of promotion opportunities and job loss. In the course of the conversation previously referred to between K. Winget and Doyka, K. Winget stated that there would be no chance for promotion in a union shop because supervision is hired from "outside." Doyka challenged this statement, telling K. Winget, "[T]hat's not always true."

Unlike the statement regarding union dues, K. Winget's statement regarding hiring supervision from "outside" was not made as an expression of opinion based on past experience. K. Winget was the manufacturing manager. His statement that, if Respondent became a union shop, supervision would be hired from outside, thus eliminating employee promotion opportunities, specifically threatened a change in working conditions if employees selected the Union as their collective-bargaining representative. *National Micronetics*, 277 NLRB 993, 1000 (1985). I find that by threatening the loss of promotion opportunities if employees selected the Union as their collective-bargaining representative, Respondent violated Section 8(a)(1) of the Act.

In a separate conversation, K. Winget asked Summers if he knew what "UAW" stood for. Summers stated that he was not sure and K. Winget said it means "you ain't working."[16]

[14] K. Winget did not testify. My findings are based on the uncontradicted testimony of Doyka. When counsel for the Charging Party sought to have Doyka elaborate on what K. Winget had said about union dues, he testified that K. Winget stated that he had worked in a union shop and "they'd never done anything for him and he just paid all the money and never got any return."

[15] Kellogg acknowledged making this statement, and I credit him. Bettman testified to a slight variation of this statement, saying that he heard Kellogg say, "Well it doesn't matter if you win or not, because it's going to be dragged out in court for a long period of time."

[16] Bettman was getting material at the time K. Winget made this comment, and he overheard it. Bettman's testimony that Blankenship and Operations Manager Hart were also present is corroborated by Doyka who recalled that, at one point, K. Winget left and, a few minutes later, returned with Hart. In view of the hiatus between the initial conversation and the making of this comment, I consider it to have been made in a separate conversation.

This exact statement has specifically been found to constitute a threat of loss of employment since "there is no other permissible interpretation for the statement that 'UAW' stands for 'you ain't working.'" *Hurst Performance, Inc.*, 242 NLRB 121, 127 (1979).[17] By threatening job loss if employees selected the Union as their collective-bargaining representative, Respondent violated Section 8(a)(1) of the Act.

5. Threatened loss of benefits

The complaint alleges that CEO Larry Winget threatened employees with a loss of benefits in his August 5 letter to employees. The letter refers to Respondent's successful business, notes that the average employee made over $43,000 in wages, overtime, and benefits in the past year, and then states:

> Remember this, all these items become negotiable and put at risk at the bargaining table if you choose to be represented by a third party. Venture currently has union agreements at our Australia, Bailey and Atlantic facilities. Comparing your benefits to these organization's benefits will reveal that Venture Grand Blanc's gainsharing and health benefits package are outstanding.

The General Counsel alleges that the "put at risk" remark violates the Act in that it threatens loss of benefits. Allegedly unlawful statements, such as this, are properly evaluated in context. *United Technologies Corp.*, 313 NLRB 1303 (1994); *Mantrose-Haeuser Co.*, 306 NLRB 377 (1992). Although the letter does not engage in an extended discussion of the collective-bargaining process, it correctly notes that, if the employees select the Union as their collective-bargaining representative, wages, overtime, and benefits become negotiable. The "put at risk" remark is made in the context of the bargaining table. There is no threat to decrease benefits. Immediately following this statement, the letter suggests that employees compare the Respondent sponsored benefit packages at Grand Blanc and the benefits negotiated at its organized facilities. I find no implicit threat in Respondent's letter. It is protected speech pursuant to Section 8(c) of the Act. *Patrick Industries*, 318 NLRB 245, 254 (1995).

6. Solicitation of grievances and promise to remedy them

On August 5 and 6, CEO Larry Winget traveled to Grand Blanc. At his request, various other high ranking corporate officials were present including Thomas Krueger, vice president of human resources and administration, and Dave Arnsdt, who has corporate responsibility for planning, training, and communications.[18] In an effort to reach all employees, L. Winget held a series of informal meetings, generally at the end or beginning of each shift.[19] At red molding he spoke to the employees at the beginning of third shift, starting about 11:30 p.m. on August 5. The meeting lasted over an hour. A few second-shift employees who had completed work heard his remarks, but the bulk of the audience was third shift. L. Winget began by explaining the recent growth of the Company and, specifically referring to the Grand Blanc facility, noting its profitability and quality improvement. He rhetorically asked why the employees felt they needed a union and what a union could do that was not being done pursuant to the Respondent's open door policy.[20] In response to this invitation, employees brought various individual complaints to his attention. One employee questioned why he had not received a 50-cent-an-hour general wage increase given to all employees. Other employees questioned why there had been a change in the third-shift starting time. In response to these and similar complaints, L. Winget turned and looked to the management official standing with him who had responsibility for the specific area to which the complaint related. That individual typically responded, "I will look into it."[21] Employee Michelle Sengthammavong explained to L. Winget that she had been placed on third shift despite having seniority superior to some employees who remained on first shift. She noted that she had brought the situation to the attention of Bill Hart, the plant manager at the time this occurred, and that he had said he would get back with her, but did not do so. Sengthammavong asked L. Winget why her situation was not of importance to anyone except her. L. Winget responded that he was not sure why, but he would check into it.[22] He then told her to contact the front office to get the telephone number at which she could contact him directly at his office in Fraser, Michigan. In response to employee complaints about favoritism, L. Winget stated that he would be more visible in the future. He told the employees that "if you'll give me six months, we can take care of our problems."[23]

Respondent argues correctly that there is no evidence that L. Winget made a specific promise in the course of his remarks. The absence of a specific promise, however, is not dispositive of this allegation. The appropriate inquiry is whether, under all the circumstances, Respondent's actions implied that employees' complaints would be addressed if they rejected the Union. L. Winget gathered the employees informally, with his top management present and visible to the employees.[24] He then solicited the employees' complaints, asking why they felt they needed a union rather than Respondent's open door policy.[25] L. Winget listened to the complaints that the employees addressed

[17] Respondent argues that the comment was made in jest and that comments made in jest do not violate the Act. I initially note that the appropriate inquiry is not whether the comment was made in jest but whether, "under all the circumstances . . . [it] would not reasonably have been viewed as" a threat. *La-Z-Boy*, 281 NLRB 338 fn. 2 (1986). K. Winget did not testify. There is no probative evidence establishing that this comment was made in jest.

[18] L. Winget did not testify. Respondent presented Krueger as its only witness regarding these meetings.

[19] The General Counsel adduced no evidence that L. Winget disparaged prounion employees by referring to them as "'anti-Venture' or disloyal employees."

[20] I do not credit Krueger's too carefully phrased testimony that L. Winget opened the floor for questions by asking, "[I]f the employees had any questions about anything that he had said or about what was going on in the Company."

[21] Regarding the change in shift starting time, L. Winget looked at Plant Manager Warren Brown who stated that he would look into it.

[22] I do not credit Krueger that L. Winget never personally committed himself to look into any specific problem that was brought to his attention by the employees. Although he may also have referred questions to the management official having responsibility for the area in which a concern was raised, I credit Sengthammavong that he personally assured her that he would check into the matter that she raised.

[23] Krueger did not deny that L. Winget made this statement. Counsel for Respondent asked Krueger whether L. Winget told any employee that he would be back "in six months to see if things had changed." Krueger denied that L. Winget made that statement.

[24] L. Winget specifically requested Krueger to attend the meetings.

[25] Respondent argues that L. Winget did not solicit employee complaints. I have found, consistent with the credible testimony of Sengthammavong, that he did.

to him. He responded directly to some complaints, including specifically the one raised by Sengthammavong. Often, by a nod of his head, he referred the problem to the appropriate member of the management team standing with him. That individual typically responded that he would look into it.[26] Respondent would have me find that this midnight meeting in which the chief executive officer fielded employee questions and complaints, referring them to the appropriate member of the management team, was a sterile action, signifying nothing. I disagree. By receiving employee complaints and referring them immediately to the appropriate member of the management team, L. Winget clearly was conveying the impression of a concerned and responsive management. He verbalized this impression when he told the employees that "if you give me six months, we can take care of our problems." Respondent clearly implied that "management would react favorably to the underlying problems that gave impetus to the organization drive." *Kinney Drugs*, 314 NLRB 296, 299 (1994).[27] In so doing, Respondent solicited employee grievances and implied that it would remedy them in violation of Section 8(a)(1) of the Act.

7. Alleged violations attributed to Supervisor Beamer

Counsel for the General Counsel, at the hearing, amended the complaint to allege that, on or about September 20, Supervisor Roger Beamer, by two statements, implied surveillance of employee union activities, that he threatened employees by stating that Manager Blankenship wanted him to break up third-shift molding, and that he threatened that management can get rid of employees easily. Employee Terry Dungey, a third-shift facilitator in red molding, testified that, at a meeting held during a break period, Beamer, in the presence of herself and five other facilitators, stated that he believed some of the facilitators were trying to get new employees to become Union, that management thought Dungey was the leader, and that "we were trying to persuade these people." In further comments, after a suggestion was made that Respondent was trying to get rid of "some of us," Dungey testified that Beamer allegedly commented that the Respondent did not have to have a reason for terminating an employee, that management could simply say, "You're just not what Venture wants." I do not credit Dungey's uncorroborated testimony.[28] Beamer credibly denied making the above comments.[29]

The only evidence that the General Counsel adduced regarding the allegation that, on or about September 20, Beamer threatened employees by telling them that Dan Blankenship had directed him to break up third shift consisted of testimony by employee Snyder.[30] Snyder testified that he recalled Beamer "saying something about he was supposed to split our shift up or something to that matter;" however, he could not recall anything else said at or about the time this comment was made. He further testified that "I don't know where it came from prior to that." In the absence of any evidence that the statement had any connection with employee union activity, I have no basis for making any finding that this alleged comment violated the Act.

CONCLUSION OF LAW

By confiscating and destroying union literature, coercively interrogating an employee, threatening loss of promotion opportunities and job loss if employees selected the Union as their collective-bargaining representative, and soliciting employee grievances and promising to remedy them in an effort to dissuade employees from supporting the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.[31]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[32]

ORDER

The Respondent, Venture Industries, Inc., Grand Blanc, Michigan its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Confiscating and destroying union literature.

(b) Coercively interrogating any employee about union support or union activities.

(c) Threatening loss of promotion opportunities and job loss if employees selected the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO as their collective-bargaining representative.

(d) Soliciting employee grievances and promising to remedy them in an effort to dissuade employees from supporting the Union.

[26] There is no evidence that any complaint was ignored or dismissed as being unworthy of management's attention.

[27] This case was remanded to the Board, but the relevant finding was not disturbed. *Kinney Drugs, Inc. v. NLRB*, 74 F.3d 1419, 1421 fn. 5 (2d Cir. 1996).

[28] I am satisfied that Dungey did not intentionally misrepresent any fact to which she testified; however, I have little confidence in her recollection of specific details. Thus, although she testified to the confrontation between Snyder and Hansel, she incorrectly reported that it occurred in the smoking breakroom, rather than the regular breakroom where both Snyder and Hansel agree the confrontation actually occurred. Snyder was asked about the September meeting with Beamer, but he had no clear recollection of it. Four other facilitators were present, but none were called to corroborate Dungey regarding this meeting.

[29] Beamer acknowledged, stating that Dungey was the "leader" of third shift, but the statement was not made in the context of union activity or attempting to persuade new employees.

[30] Michelle Sengthammavong testified that a couple of days after L. Winget's meetings of August 5 and 6, Beamer told her that L. Winget had directed him to "break up us on third shift" because "we were the ones who created the union problem." The General Counsel did not amend the complaint in this regard and Counsel for Respondent did not address it when he presented Beamer in response to the amendments made at the hearing. Insofar as this matter was not fully litigated, I make no finding regarding it.

[31] Counsel for the General Counsel, at the hearing, stated that the General Counsel was seeking a broad order as a remedy and amended the pleadings to so reflect. In brief, the General Counsel did not present any specific argument in support of such an order. Insofar as the unfair labor practices found herein were limited to the second and third shift of red molding, I find no basis for an exceptional remedy.

[32] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in Grand Blanc, Michigan, copies of the attached notice marked "Appendix."[32] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 12, 1996.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[32] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."